

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:

Flat Iron Partners, LP
District 1, Map 25, Control Map 25, Parcel 5.27
Commercial Property
Tax year 2005

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)

Tipton County

INITIAL DECISION AND ORDER

Statement of the Case

The Tipton County Assessor of Property (“Assessor”) has valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$269,500	\$5,658,000	\$5,927,500	\$2,371,000

On June 28, 2005, the State Board of Equalization (“State Board”) received an appeal by the property owner, Flat Iron Partners, LP (“FIP”).¹ As acknowledged on the appeal form by FIP principal A. Richard Wilson, this property was not appealed to the Tipton County Board of Equalization (“county board”) during its regular 2005 session.

On April 28, 2006, State Division of Property Assessments (DPA) attorney John C. E. Allen filed on the Assessor’s behalf a motion to dismiss this appeal on the ground that the State Board lacks jurisdiction. Pursuant to an order (dated May 3, 2006) granting FIP’s contemporaneous motion to bifurcate the proceedings, the undersigned administrative judge conducted a jurisdictional hearing on May 11, 2006 in Jackson. FIP was represented by W. Lewis Jenkins, Jr., Esq., of Wilkerson, Gauldin, Hayes & Jenkins (Dyersburg). Mr. Allen, accompanied by Deputy Assessor Greg Stimpson, appeared on the Assessor’s behalf. Also in attendance at the hearing was Ray Weatherly, a member of DPA’s staff.

Findings of Fact and Conclusions of Law

This appeal concerns the Sunrise Apartment complex, which was built in 2002 on a 12.25-acre site in Covington. Construction of this project was partially financed through the Low-Income Housing Tax Credit (LIHTC) program authorized by Section 42 of the Internal Revenue Code. See Spring Hill, L.P. et al. v. Tennessee State Board of Equalization, et al., 2003 WL 23099679 (Tenn. Ct. App., December 31, 2003).

FIP, a Tennessee limited partnership, acquired the subject land in two separate transactions (on March 17, 2000 and March 6, 2002) for a total of about \$230,000. On both

¹The mailed appeal form is deemed to have been filed on the postmark date of June 24, 2005. State Board Rule 0600-1-.04(1)(b).

warranty deeds, the party responsible for payment of the property taxes was identified as follows:

Flat Iron Partners, LP
163 Brookdale Road
Johnson City, Tennessee 37601

Exhibit #4.

The Assessor's valuation of the subject property for tax year 2005 (\$5,927,500) remained the same as in 2004.² Exhibit #3. Hence the Assessor was not required by Tenn. Code Ann. section 67-5-508 to notify FIP of the unchanged assessment of such property by mail. However, in compliance with subsection (a)(2) of that section, the Assessor did cause to be published in the May 13, 2005 edition of *The Covington Leader* a notice specifying the period during which the county board would accept appeals of property assessments for tax year 2005 (June 1—June 8, 2005). Exhibit #1.

Mr. Wilson, who is responsible for managing the day-to-day affairs of FIP, testified that its mailing address has always been as follows: 7887 San Felipe #122, Houston, TX 77063. Yet according to the official 2004 property record card, FIP's mailing address was P. O. Box 171068, Nashville, TN 37217. Mr. Wilson knew nothing about that Music City address, or how the Assessor happened to obtain it. In any event, the Assessor's property record card for tax year 2005 – last updated on June 17, 2005 – indicates FIP's correct Houston address. Exhibit #3.

According to Mr. Wilson, he visited the Assessor's office "on two different occasions" prior to this appeal and spoke with Deputy Assessor Stimpson about the alleged overvaluation of the subject property. Mr. Wilson could not recall the exact dates of those conversations. Never, he testified, was he actually notified or told when the county board would meet to hear any complaint regarding the assessment of such property. Mr. Wilson admitted, however, that he had not specifically asked for such information. He did not see the aforementioned notice in the local newspaper.

FIP paid the 2004 and 2005 taxes on the subject property in full before the respective delinquency dates – though in tax year 2004, apparently, the bill was addressed to the Nashville post office box. The tax bills indicated the appraised and assessed values of the property. Exhibit #2.

Tenn. Code Ann. section 67-5-1401 provides (in relevant part) that:

If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount....

²The most recent general reappraisal of real property in Tipton County occurred in 2002.

See *also* Tenn. Code Ann. section 67-5-1412(b)(1).

In 1991, however, the General Assembly enacted an amendment which affords a taxpayer the opportunity for a hearing to demonstrate “reasonable cause” for failure to appeal an assessment to the local board of equalization within the allotted time. The State Board may accept a direct appeal upon a showing of reasonable cause up to March 1 of the year following the tax year in controversy. Tenn. Code Ann. section 67-5-1412(e).

The Assessment Appeals Commission, appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502, has declared that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the “reasonable cause” provisions to waive these requirements except where the failure to meet them is due to illness or other circumstance beyond the taxpayer’s control....

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2-3.

FIP contends that its failure to appeal to the county board was justified in this instance because: (1) such an appeal would have been futile in view of the holding of the Tennessee Court of Appeals in Spring Hill v. State Board of Equalization, *supra*; (2) the Assessor’s mailing address for FIP was incorrect; and (3) the Assessor is obliged to inform a taxpayer who has complained in person about a property assessment of the procedure for appealing it.

To be sure, in considering any complaint that FIP might have made pursuant to Tenn. Code Ann. section 67-5-1407, the county board could not properly have ignored the Spring Hill precedent. But while that decision upheld the State Board’s appraisal methodology with respect to the properties and tax year (1998) involved, it hardly foreclosed any claims of overvaluation of LIHTC properties in future tax years. Indeed, in the aftermath of Spring Hill, the county and state boards of equalization have continued to receive numerous appeals regarding such properties that are predicated on different grounds (i.e., other than the treatment of the federal tax credits). Each of those cases must be resolved on its own merits; and, as the administrative judge has previously observed, property owners cannot be excused from appearing before a county board of equalization “merely on their belief that the probability of success is low.” H & W Environmental Servs., Inc. (Benton County, Tax Year 1995, Initial Decision and Order, December 22, 1995), p. 4.

The apparent error in the Assessor’s records concerning FIP’s mailing address also lacks significance here. As previously mentioned, since the assessment of the subject property did not change in tax year 2005, FIP was not entitled under Tenn. Code Ann. section 67-5-508 to notification of the 2005 assessment by mail. Moreover, even if such notice had been required, the Assessor could presumably have relied on the Johnson City, TN address shown

on FIP's deeds to the property. Further, having previously received (and paid) the 2004 tax bill on the property, FIP cannot legitimately plead ignorance as to the amount of the unchanged assessment.

Finally, the administrative judge knows of no authority for the proposition that an assessor has an affirmative duty to apprise any person who expresses dissatisfaction with an assessment of the deadline for appealing it to the county board. Had Mr. Wilson asked for such information and received an inaccurate or misleading response, a direct appeal to the State Board might well have been in order. But that is not the situation here. In fact, the evidence of record does not even establish that he visited the Assessor's office *before* the published June 8, 2005 deadline.

It is understood, of course, that the kind of legal notice contemplated by Tenn. Code Ann. section 67-5-508(a)(2) may escape the attention of many owners of property in the taxing jurisdiction – especially out-of-state residents such as Mr. Wilson. But the intended purpose of such notice would be largely frustrated if it were deemed to be effective only against those persons who actually read it.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 26th day of May, 2006.

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: W. Lewis Jenkins, Jr., Esq., Wilkerson Gauldin Hayes & Jenkins
John C.E. Allen, Staff Attorney, Division of Property Assessments
Ray Weatherly, TCA, Supervisor, Jackson Division of Property Assessments
Bill Stimpson, Tipton County Assessor of Property

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